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Harmonization and the Construction of Europe: Variations away from a Musical Theme

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Anyone merely acquainted with European law knows that 'harmonization' designates the legal mechanism by which national legislations are aligned so as to eliminate or at least attenuate the inconvenience arising from their disparities.[1] The term is also used outside the legal sphere. I shall quote below a school-children history textbook which speaks of 'harmonization of life-styles' in Europe. Not everybody, however, is familiar with the term. The organizor of an anthropological workshop to which I was considering presenting an earlier version of this article told me that she had never heard of harmonization. The fact that she was head of department in a British University indicates that the term is not as widespread as those who are closely or loosely related to 'Europe' and who take it for granted may think. This article seeks to tease out the significance of its successful place in the 'European' jargon. Through doing this, it addresses the concern according to which harmonization might signal the steamrolling of European cultures into uniformity.

Before outlining the argument developed in this article, a note on punctuation may be in order. The legal scholar may be surprised to encounter the noun 'Europe' and the qualificative 'European' placed in inverted commas. Such punctuation is assuredly more commonly used in anthropology than in law, the two disciplines which inform the approach

1 The author is grateful to the European University Institute who hosted her for six months in 1995 as a Jean Monnet Fellow. She wishes to thank the members of the department of social anthropology of the University of Hull, Francis Snyder and Ralph Grillo for their comments on an earlier draft. Responsibility for the text remains hers.

adopted in this article.[2] In anthropology, one possible function of inverted commas is to highlight the problematic status of the concept which they bracket. In this particular case, they serve to indicate that the European Community/Union,[3] increasingly simply referred to as Europe (without inverted commas), has appropriated for itself a geographical term which designates a continent which is only partly represented and encompassed in this evolving political construction. The politically and socially ambiguous implications of the situation warrant the use of inverted commas in order to emphasise that the sense of the terms Europe and European is not obvious. In fact, even the qualificative European of the expression European law should be put into commas. But I have refrained from doing this in order not to overweight the text. From now on, I shall indeed avoid resorting to inverted commas in reference to these expressions, although the reader should keep in mind that the Europe I am talking about throughout this text is no more a natural entity than any other political structure.

As I have said, this article is concerned with harmonisation as a keyword of the European vocabulary. I shall propose that the success of the term, which was exclusively used in a musical sense in the early 20th century, is due to the fact that, etymologically, it refers both to unity and to diversity and allows to declare the need for a reinforcement of unity while celebrating the richness of diversity. In theory, the word could be used to stress either one or the other aspect, in varying degrees, according to circumstances. Such play exercise in unity and diversity could arguably be useful for the proponents of the European project, attempting to bring about a European identity, but forced to realize that their efforts are not met without resistance, taking in particular the form of popular fear for loss of national (and regional) traditions. Interestingly, however, in European law, harmonization has

2 This combination is not common (cf Snyder 1995, 2). For anthropological analyses of the EC, see Goddard et al. 1994; Wilson and Smith 1993; Shore 1993; Abélès 1992; Shore and Black 1992; Bramwell 1987.

3 The European Economic Community (EEC) was officially renamed European Community (EC) in the Treaty of Maastricht signed in 1992. The latter Treaty created a European Union (EU). The EU consists on the one hand in the three existing European Communities, i.e. EEC, European Coal and Steal Community and Euratom, (the so-called first pillar of the EU) and, on the other hand, in a common foreign and security policy (second pillar) and in cooperation in the field of justice and home affairs (third pillar), both to be conducted according to procedures which leave them largely in the hands of national governments (as opposed to Community institutions).

hardly been used to denote the wish to maintain diversity. It quickly became used to refer to the process through which national laws are made, when possible, identical. Outside the legal sphere, it has become used to refer to the process through which Europeans are becoming more alike to each other. This usage seems to privilege uniformity (rather than unity) over diversity. Would this mean that the European construction inexorably leads to an erasure of difference, which would explain the abhorrence which Europeans now appear to feel towards harmonization? But of which diversity (and similarity) are we implicitly talking about when we raise this question? And what does it mean to be (or become) Europeans? Such are the fundamental issues which underline the more technical discussion presented in this article.

I. Harmonization in law

One amongst three words

The introduction of the word 'harmonization' in European legal jargon is to be understood by reference to the aim which presided at the creation of the European Economic Community. Failing the attempts to create in the aftermath of World War II a political union in Europe and following the successful establishment of the European Coal and Steel Community in 1951, the 'founding fathers' of the European project, as they are commonly called, decided to extend the successful experiment of the common management of the coal and steel production to the economic sphere in general. As a result, the Treaty of Rome establishing the EEC was signed in 1957 (as was signed a separate Treaty on Euratom). Its immediate purpose was to allow the realization of a Common Market between the Member States. What was envisaged was the (progressive) realization of conditions such that goods, persons, services and capital would eventually move freely between the Member States, who would moreover establish between themselves common policies in respect to important economic sectors, notably agriculture and transport. The Treaty contained provisions for the removal of 'physical' obstacles to movement between the Members States, and

accordingly provided for the creation of a Customs Union. It was realized, however, that a Customs Union would only be of limited interest if technical standards legally imposed in one Member State differed from those to be respected in another Member State. Until standards, everywhere in the increase following industrialization, were 'harmonized', they would constitute 'technical' obstacles to trade: goods such as motor vehicles, pharmaceuticals, and electrical appliances, to take examples from EEC harmonizing legislation enacted in the 1960's and 1970's, would either be unable to move or would do so but at increased costs. The Treaty therefore put into place mechanisms enabling the European institutions to remedy the inconvenience (an expression to which I shall come back later) resulting from disparity between national legislations especially, but not only, in regard to technical obstacles to trade.

A number of Treaty provisions (amongst which articles 100 and 235, but including many others) empowered the Council and the Commission, often under the obligation to consult the Assembly (now European Parliament), to 'coordinate', 'harmonize' or 'approximate' national legislation in various domains. Following the logic of the legal mind which generally expects the use of distinctive terms to be legally significant, the three expressions were thought theoretically to imply a conceptual difference between three modes of remedying the lack of 'fit' between national legislations. One favoured interpretation suggested that coordination only referred to superficial action, leaving the substance of national laws intact, harmonization could start touching at the substance of laws, while approximation allowed for yet a deeper action (Monaco 1960, pp. 64-65; Vignes 1973; for variants, see Goldman 1969, no 2208; Beuve-Mery 1967; Polach 1959, p. 153). It was nonetheless recognized that these conceptual distinctions meant very little in practice: the Treaty (orginally signed by France, Germany, Italy and the Benelux countries)[4] had been written in French, German, Italian and Dutch; translation of the three terms, which appeared in a number of articles, was not consistent throughout the four so-called authentic texts. As Goldman concluded, it was chance which resulted in one term being used rather than another (1969, no 2209; see also Dashwood 1977, pp. 274-75; Polach 1959). It was accepted more or less immediately that the

4 The U.K., Ireland and Denmark joined in 1973, Greece in 1981, Spain and Portugal in 1986, Austria, Finland and Sweden in 1995. Norway has failed to enter twice following referendums in 1972 and 1994.

three terms ultimately referred to a single process, and that not too much emphasis could be placed on the degree of 'alignment' which each of them conceptually seemed to allow.[5]

'Coordination' nonetheless came to be regarded as denoting a different and more superficial action than the other two terms, which came to be accepted as equivalent. In legal parlance, one could thus either speak of 'harmonization' or of 'approximation' (as the French word '*rapprochement*' was translated in English) to refer to the same thing. In practice, the former term emerged as the favoured one. This is not to deny that many lawyers (at least French-speaking ones) continue to prefer the latter term. In 1968, a member of the legal service of the European Commission wrote an article on '*rapprochement*', which he used in italics, thus giving the impression that such was indeed the proper legal expression; he did go on to say that 'harmonization and coordination represent imprecise, although equivalent, terminology' (Leleux 1969, p. 131).[6] The voluminous and authoritative *Commentaires Megret* on EC law entitle the relevant chapter '*Le Rapprochement des législations*' in their two successive editions (Vignes 1973 and 1993). Perhaps '*rapprochement*' is more dry and does not lend itself to all kinds of applications, therefore appearing more precise to a legal ear. By contrast, 'harmonization' would arguably have a more general flavour to it - which is precisely why the term would have spread beyond the strictly legal sphere, as I have said. Although some lawyers stick to the term 'approximation' and acts of European legislation use the three terms available according to Treaty usage, it is nonetheless fair to say that 'harmonization' has become the most popular term, in both senses of being the most widely used by European specialists (Dashwood 1983, p. 181) and the best recognized in the general public (see below). It is therefore hardly surprising that the recent legal dictionary of the European Communities would have chosen to make an entry under harmonization (to which it refers the reader looking at the word approximation). As we shall now see, the term was indeed a perfectly suitable one for European law to adopt.

5 Governments, however, sometimes take argument of the conceptual difference between the three terms during political negociations.

6 All translations from the French are mine.

The etymological meaning of '*harmonisation*'

Of the three terms discussed above, coordination was the only one established in legal parlance by the mid-twentieth century. The other two terms were new (Polach 1959, pp. 150-51; Beuve-Méry 1967, p. 848).[7] The late René David, a French legal comparatist of international reputation, has been credited for the introduction/invention of the word 'harmonization' in the legal sphere (Polach 1959, p. 154). An examination of its etymology, through the consultation of French dictionaries, will make clear why the word proposed by René David could appropriately designate the legal mechanism introduced by the Treaty of Rome.

The *Larousse du XX e siècle* published in 1930 (under Paul Augé's direction) says of 'harmonisation' that it is synonymous with vocal harmony, attaching to it a musical meaning only.[8] In 1958, the *Littré* (*Dictionnaire de la langue Française*, Gallimard Hachette) presents '*harmoniser*' as both a musical term and a neologism signifying '*mettre en harmonie*', '*faire accorder*' (to put in harmony or to make agree). Today, '*harmonisation*' can certainly be said to have entered the French language. Without presenting it as a neologism, the *Grand Larousse* defines it in both its editions of 1962 and 1987 as '*action d'établir des proportions heureuses entre plusieurs choses, de les mettre en accord*' (the fact of establishing pleasing proportions between a number of things, of putting them in accordance with each other) (with slight changes in the definition offered in the two successive editions which need not preoccupy us here). The word has even made its way in the *Petit Larousse illustré*, where it receives, in 1992, an expectingly more concise definition, namely, '*action d'harmoniser; son résultat*' (the fact of harmonizing; its result).

Further examination of the *Littré* of 1958 may help us to understand the introduction of the term in European law. The definition it gives of the term '*harmoniser*', quoted above, is succint. By contrast, the dictionary

7 It is to be noted that the two new terms appear to be more dynamic than the existing one. It is my impression that EC law vocabulary has more active connotations than national law, reflecting the dynamic European 'integration' project.

8 The musical definition given by the *Shorter Oxford English Dictionary* (1973) to the verb 'to harmonize' reads as follows: 'To add notes, usually of lower pitch, to the notes of (a melody) so as to form chords; to add harmony to'.

offers a definition of the word '*harmonie*' in six parts, worth quoting at some length:

1° Jonction par engrenage, sens propre du mot grec conservé seulement dans le langage anatomique: espèce de synarthrose ou d'articulation formée par des dentelures presque imperceptibles.
2° Par extension, agencement entre les parties d'un tout, de manière qu'elles concourent à une même fin. L'harmonie des corps vivants. Mettre plusieurs choses en harmonie. L'harmonie des différentes parties d'un bâtiment. Il règne une savante harmonie entre toutes les parties de ce tableau. ...
3° Par comparaison. Tout ce qui va bien ensemble et, par cela même, paraît agréable. ...
4° Fig. Il se dit de ce qui s'accorde. Concorde. Ils vivent dans la plus parfaite harmonie. ...
5° Terme de littérature. L'ensemble des qualités qui rendent le discours agréable à l'oreille. ...
6° Fig. Terme de musique. En général, tout ce qui est agréable à l'oreille. ...[9]

The first and second definitions make it appear clearly that 'harmony' etymologically refers to an arrangement between different parts of a whole, in such a way as making these parts serve a single purpose. This idea can easily be transposed in the legal European context: national legislations must be adapted, so as to further the aim of the establishment of the Common market. But, as is apparent from the third to sixth acceptances given, the meaning of the word '*harmonie*' can slip: the word can simply refer to something which is pleasing or working well, somewhat losing the idea of different individual parts contributing to the

9 1° Joined by intermeshing, proper meaning of the Greek term kept only in the anatomical language: kind of synarthrosis or articulation made of almost imperceivable indentations.
2° By extension, arrangement between the parts of a whole; in such a way that they contribute to the same end. The harmony of the body. To put a number of things in harmony. The harmony between the various parts of a building. There runs a clever harmony between all parts of this picture.
3° By comparison. Everything which goes well together and, by this very fact, appears to be pleasing. ...
4° Fig. Said of what is in accordance. Concord. They live in the best harmony. ...
5° Literature term. The collection of qualities which render speech pleasing to the ear.
6° Musical term. In general, all that is pleasing to the ear. ...

well-being of the whole. We shall see that a similar slippage occured both in the legal sphere and in general parlance in respect to the word '*harmoniser*'. More and more, to be harmonized is used to mean: to have become more of the same, if not identical. Strictly speaking, such usage is against the dictionary definitions of the term *harmoniser*, for it does not imply the constitution of a whole through the assemblage of parts which maintain their individuality.

From legal harmonization to legal uniformity

a) The development of various harmonizing methods

EC lawyers today distinguish between various harmonization methods. These are not provided for by law, but are identified by commentators who attempt to make sense of the legislative activities of the European Community. To simplify, let us say that 'total harmonization' was generally sought in the years following the entry into force of the Treaty of Rome, that 'optional harmonization' was introduced in the 1970's to remedy the perceived excesses of the latter method, and that the Commission encouraged the adoption of a 'new approach' since 1985. If one can discern successive waves and 'fashions' in the harmonization policy developed by the European Community, it should be clear that a new way of proceeding adds to the array of legislative practice developed by the European institutions without replacing earlier method(s). According to Daniel Vignes, an eminent specialist on the question, total harmonization remains the most frequent harmonization method (1993, p. 346).

One speaks of total harmonization when EC legislation (normally in the form of a directive) provides for the details of the legislation to be adopted by the Member States. The eight directives on measures units, for example, were of this type. Member States were told exactly which measure units were to be used on their territory. They had no choice but to 'adapt' (or abandon in some cases) their national legislation so as to ensure that the rules contained in the directives found their way into their national law. The advantage of the introduction of common measurement for the Common market is clear: how could trade be expected

to develop between countries whose products are respectively manufactured and marketed according to different measure units? The conversion entailed by the old disparate system obviously impeded, in the sense that it did not favour, the development of trade between the Member States. The price to pay for this development, however, is equally clear: all food items, for example, must have their weight indicated in kilogrammes on their package. So much for the traditional British weight system and the sovereignty of its Parliament: pounds and ounces disappeared from the statute-book, if not (yet) from the market-place, as the cherished British national institution was left with no discretion about the way to implement the said directives. As can be readily seen, in practice, total harmonization leads to the creation of uniform European law. As we shall see below, however, this is generally not said in so many words.

The method presented serious disadvantages, which forced the Commission to review its practice. Currall (1985) identifies three. First, as we have just seen, it could kill national traditions to which people were attached (see for example *The Guardian* 23 September 1995, p. 6, on the most recent step towards metrication in Britain). Second, it brought about results very slowly, because agreement on the detailed provisions of a piece of legislation was only achieved after a long time, often years. Third, and immediately following from this, it restrained technical innovation because, once agreement had been reached in a particular sector, it was difficult to change the technical standards to which the marketing of goods (cars, medicine, food additives, and so on) were subjected.

'Optional harmonization' was offered as a possible answer to the first disadvantage. In this method, two regimes, one European, the other national, are allowed to co-exist side by side. European standards are set, as in the method of total harmonization. Goods which conform to these European standards move freely within the European Community. But Member States can also set national standards. In this second regime, goods are marketable in the national domestic market only. Optional harmonization has been considered to be a particularly suitable method in the food and drink sector, where the imposition of uniform European standards can destroy distinctive national and local flavours

(Dashwood 1977, p. 289; Currall 1985, p. 179). Its application for example explains why some cheeses cannot be found outside the territory of the Member State in which they are produced.

In 1978, through the ruling in the *Cassis de Dijon* case,[10] the European Court of Justice partially provided a solution to the second problem, having to do with the slow rate in the implementation of the harmonizing program. The case had been brought by a German company, following the refusal by the German authorities to grant it the authorization to import French cassis on the ground that German law fixed at 25 % the minimum alcohol content of marketable fruit liqueurs; the cassis de Dijon contained between 15 and 20 % of alcohol. In other words, a disparity between national legislation meant that cassis was effectively barred from entry into Germany. The European Court of Justice, however, ruled that the German legal provision constituted a measure having an equivalent effect to a quantitative restriction on import. As such, it was contrary to article 30 of the Treaty of Rome; cassis had to be allowed in Germany. The Court declared in its ruling: 'There is ... no valid reason why, provided that they have been lawfully produced and marketed in one of the Member States, alcoholic beverages should not be introduced into any other Member State'. This statement became known as the 'second principle of *Cassis de Dijon*'. (The first principle concerned the possibility for 'good' arguments offered by Member States against free movement to be accepted). It introduced a presumption in favour of free movement, overturning the apparent obstacle arising from the particular requirements set out by a national legislation. The Court's ruling released pressure for harmonization in the European Community: following *Cassis*, all products lawfully manufactured in the Common market are normally marketable all over the Community. To use an expression increasingly favoured in the European jargon since the early 1980's, Member States must 'mutually recognize' each other's products.

Exceptions, however, remain. In some cases, Member States are entitled to refuse entry to a particular product. These cases are not clear until either the Court has ruled on them or they have been the object of EC

10 Case 120/78, *Rewe-Zentral* v. *Bundesmonopolverwaltung für Branntweinn* [1979] E.C.R. 649.

legislation. This is to say that *Cassis* did not solve all the problems associated with harmonization and the establishment of a Common market. In fact, the Member States amended the EEC Treaty a few years after the ruling in an effort to speed up, amongst other things, the harmonizing process. The Single European Act (SEA) was signed in 1986. It provided for the establishment, by 31 December 1992, of the internal market, defined as an 'area without internal frontiers', for which the adoption of some three hundred harmonizing measures was deemed necessary. Until the SEA, most harmonization directives had been taken on the basis of article 100 of the EEC treaty,[11] which required the Council to act unanimously. The SEA introduced a new article 100 a in the EEC Treaty, which allowed the Council, by qualified majority, to take harmonization measures in most domains related to the internal market. As a result, one Member State was no more able to stop harmonization legislation from being enacted. In itself, the change in procedure represented for the EC the promise of a speedier action than in the past. The adoption of the 'new approach' further helped to accelerate the harmonization movement, at the same time as it remedied the third problem identified above by facilitating the adaptation of standards to technical innovation.

The thrust of the 'new approach' is that the European legislative institutions only seek to harmonize (in its non-etymological sense of render uniform) 'essential requirements', leaving to specialist bodies the responsibility of fixing the exact details of the norms to be applied. The toy directive of 1988 can be cited as an example. It lists the essential safety requirements for toys in a very general manner. To quote one: 'Toys for use in shallow water which are capable of carrying or supporting a child on the water must be designed and constructed so as to reduce as far as possible, taking into account the recommended use of the toy, any risk of loss of buoyancy of the toy and loss of support afforded to the child'. In a total harmonization formula, the Council would have been much more specific in its provisions, regulating for

11 Article 100 (which speaks of approximation) is the Treaty article which allows for harmonization in any domain, to the extent that it leaves this domain undefined. There exist other Treaty provisions which also allow for harmonizing measures to be taken, but they specifically state in which domains harmonization is to take place.

example the type and thickness of material which could be used. These details are now for specialist bodies to regulate.

The new approach is associated with 'mutual recognition', this other important word in the European vocabulary, because it requires Member States mutually to recognize the national standards where the details of the commonly agreed essential requirements are worked out. To pursue the example of the toy directive, each Member State appoints the 'approved bodies' who will ensure that the essential toy safety requirements are applied, notably by carrying out the 'EC type-examination' at the request of manufacturers established on their national territory. Once a toy bears the recognizable 'CE' symbol, a Member State cannot in principle oppose its importation, for national authorities must presume the toy's conformity with the EC safety essential safety requirements, as transposed in relevant national standards.

In the toy case, a variety of national standards exist. The Commission, however, understandably prefers normative bodies to be European. Organisms are thus created specifically for implementing EC legislation. But, as Daniel Vignes perceptively remarks: 'with the development of this method, the term mutual is more and more rubbed out, and one is increasingly talking of EC recognition' (1991, 539). The substitution of national controls with a purely Community control leads him to comment: 'The national nature of legislations is far from respected' (*ibid*). This pertinent observation raises the question of whether 'mutual recognition' will one day signal the elimination of difference rather than its respect. Such development would reproduce what has happened with harmonization, as the material I have just presented implicitly suggests.

b) The underlying objective of legal harmonization

Originally, the one thing on which commentators agreed was that harmonization did not mean the creation of Community provisions which would replace national legislations (Polach 1959, p. 164; Monaco 1960, p. 73; Vignes 1993, p. 371). This is why the directive, defined in the EC Treaty as 'leav[ing] to the national authorities the choice of form and methods' for implementing the imposed (binding) result, was thought to be its perfect instrument (Monaco 1960, p. 67; Vignes 1993, p. 302).

'False' directives, however, were adopted, which left no discretion to the Member States: their task was limited to ensuring that litteral transposition of EC provisions into national law took place (Vignes 1973, p. 176; Dashwood 1983, p. 181; see also Rodière 1965, p. 340). The introduction of article 100 a by the SEA consecrated the situation by admitting that a regulation was a possible harmonizing instrument; by opposition to a directive which (normally) depends for its application on enactment in national law, a regulation is directly applicable, i.e. directly creative of uniform Community law. Leleux had noted as far back as in 1968 that the approximation process could lead to uniformity (p. 131). In 1978, a legal advisor to the Commission of the European Communities felt confident in writing: 'The harmonization of laws on the basis of Article 100 necessarily implies a unified Community regime' (Close 1978, p. 479). This was wrong. But when Daniel Vignes choses to write an article on whether the *rapprochement des législations* still deserves its name (1991), it is of course because, on the whole, he thinks that it does not (see also Vignes 1993, pp. 302 and 361).[12] I agree with him, and although Vignes speaks of approximation (his favoured term), his remark of course is directly transposable to harmonization (its equivalent term).

My contention is that the slippage in the meaning of these two terms is not fortuitious, but corresponds to the intention of those whose *raison d'être* was to implement the Treaty. In 1965, von der Groeben, Commissionner responsible for harmonization, declared the regulation to be, when available, the best harmonization tool. Around the same time, regrets were expressed in some circles when uniformity was not achieved (cited by Rodière 1965, p. 351). More recently, total harmonization has been presented as the ideal harmonization method, the only one giving absolute certainty that obstacles resulting from the disparity between national legislations had been eliminated (Waelbroeck 1988, p. 247). These comments are not innocent; they demonstrate that uniformity is sought, whenever possible.

One may wonder where this inclination towards uniformity comes from. On the one hand, it must probably be linked to the desire to make

12 The same may be true of 'mutual recognition' which increasingly means 'European recognition', as Vignes notes (cf the above discussion).

things less difficult, i.e. more simple. The lawyer may be inclined to understand this as requiring the setting up not only of a unitary legal framework, but also of uniform rules. It is significant in this respect that the legal literature on harmonization appears to take for granted that disparity between national legislations constitutes an 'inconvenience' (see below for one exception). On the other hand, some conceived of the effort towards harmonization as an aspect of the grander project to construct Europe, both as an idea and as a reality, a project which required in their view differences to be vanquished.

A fundamental activity

It would be a mistake to think of harmonization as a purely technical matter. In fact, the imposition of a weight system, the laying down of norms in respect to the food industry, the identification of essential toy security requirements, to return to previous examples, consist in the adoption of technical provisions, but substantially affect the way Europeans conduct their daily life. A piece of legislation on 'the transport of dangerous goods by roads' may well appear to be devoid of much social significance. It is nonetheless a proposal on this subject which recently led a newspaper to inform its readers that: 'The European Parliament intervened yesterday to save the Scotch whisky industry from EU rules outlawing the movement of alcohol in traditional large wooden casks' (The *Guardian* 18 November 1994, p. 6). Mournful readers, unaware of what the elimination of technical obstacles to trade entails, may have wondered why whisky ever became in need to be rescued from 'Europe'. But not only people are concerned, so are governements for whom each harmonization measure signals a further loss of national sovereignty. The question arises of when harmonization should be pursued, which amounts also to decide which issues should better be left untouched by 'Brussels'. The answer is controversial. I shall examine it first by reference to the conditions laid down in article 100 of the EEC Treaty and then by reference to the underlying aim of the establishment of the Communities. This discussion will highlight the fundamental character of harmonization.

a) The condition of direct incidence in article 100

At the time of their inception, the Treaties establishing the European Communities were a novelty in international law in that they established supra-national legislative bodies which, as a consequence of their activity, would limit the national sovereignty of the signatory governements. Although the newly created European institutions, especially the Council, were constituted by no one else than themselves, the Member States were understandably keen to set the exact limits of the competence of these institutions. In the case of article 100 of the EEC Treaty,[13] these limits took two forms. On the one hand the article provides that the Council has to act unanimously. On the other, it says that national laws harmonized on its basis must directly affect the establishment or functioning of the common market (cf Monaco 1960, p. 66; Catalano 1961, p. 13; Dashwood 1977, p. 277). The first limitation was clear and could not be circumvented. The second, however, was open to interpretation. Members states reluctant to abandon their sovereignty (or their national ways) were inclined to interpret the condition of direct incidence narrowly. The Commission, by contrast, favoured a large acceptance of the expression.

As can readily be imagined, the exact meaning of the expression was disputed.[14] A big debate for example arose in the 1970's as the Commission invited the Council to adopt, on the basis of article 100, directives related to consumer protection and to environment. Could these fields, not mentioned once in the Treaty, be said to have a direct incidence on the establishment and/or functioning of the common market? As the above discussion on the toy directive (adopted at a later period) made clear, an absence of common consumer protection standards in the common market means that goods will be marketable from one country to another with more difficulty than would be the case if common standards were in force. As far as environment is concerned, it was argued that, if pollution control was fixed at higher level in some countries than in others, the disparity of costs for manufacturers which this situation

13 Article 100 reads: 'The Council shall, acting unanimously from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market'.

14 The United Kingdom and Denmark acquired a particular reputation in this respect (Dashwood 1983).

would create would have a repercussion on competitivity, thus affecting the establishment of the common market. The Commission, which first acted in respect to environment through soft law instruments such as general programs, eventually managed to convince the Council of the necessity to adopt at least some of its proposals.

The appropriateness for the Community to act in these two domains, originally regarded by some as intrinsically national, had been highly controversial (see Close 1978; Dashwood 1983, p. 179), but the controversy died out. In 1986, at a time when the Council had already adopted a number of environment directives based on article 100, the Single European Act specifically included environment amongst the policies on which the European Community was competent to act. Consumer protection had to wait longer to be recognized as one of the 'Community policies'. But it finally did too, also after harmonization directives had been enacted in this field. Along with other matters, 'Consumer protection' was introduced as one of the 'Community Policies' by the Treaty of Maastricht, signed in 1992.

The examples of environment and consumer protection illustrate how European competence goes increasing with the passing of years - and keeps eroding national sovereignty. Measures which would have been unthinkable suddenly appear on the agenda. In 1978, it was declared: 'Nothing so crude as common rules harmonising levels of wages is envisaged for obvious reasons' (Close 1978, p. 463). Although it is true that wages are not quite yet discussed at European level, talks about 'the week of 48 hours' make it possible today to imagine that they might be in the future. We are a long way away from the action which the Community could envisage to take thirty or even fifteen years ago. Leaving the issue of national sovereignty aside, this evolution needs to be examined in relation to the underlying aims of the establishment of the Community.

b) The all-encompassing aim of the European Community - and of harmonization

Article 2 of the Treaty of Rome laid out the task to be pursued by the Community in economic terms. It talked of a common market, eco-

nomic policies, balanced expansion, accelerated raising of the standard of living, etcetera. In this light, one could have deemed the area of competence of the EEC to be strictly economic. Areas of life, however, cannot be compartimentalized, and any attempt to isolate the economic principles of society from its political and social aspects would be an exercise doomed to failure. Small wonder, therefore, that the Commission, eventually followed by the Council, found the need to legislate on environment and consumer protection matters. No wonder either that some lawyers forecasted, as the Treaty of Rome was barely coming into force, that harmonization of penal law, hardly began to this day, would be necessary (Lecourt and Chevalier 1963, p. 277; Weinkamm 1965, p. 26). No wonder, finally, that the Treaty of Maastricht not only took out the word 'Economic' from the official title of the EC, but also introduced a section/article on 'Culture' in the EC Treaty, clearly indicating that the Community was no more strictly concerned with economic matters, if it ever was.

Development along these lines is exactly what the 'founding fathers' had bid on. For them, the establishment of a European Economic Community was a second choice. If only it had been possible, they would have preferred to create a political union in Europe. But attempts in this direction had failed, which led them to resort first to the establishment of the European Coal and Steel Community, and then to that of the European Economic Community (and Euratom). In their minds, however, their was no doubt that the economic union would have a spill-over effect on political and social life in Europe. It is in this light that the opening words of the Preamble to the EEC Treaty must be understood: 'Determined to lay down the foundations for an ever closer union amongst the peoples of Europe'.

The tension between would-be strictly economical objectives and ultimately general political aims has been reflected in different ways of conceiving of harmonization. In 1959, Polach commented that he could see no 'artificial' harmonization [ever] being introduced in Europe. The reason for this was that: '[H]armonization laws in the European Communities has [sic], we may say, a definite functional look. It serves the economic integration of Europe' (Polach 1959, p. 159). This view was to be repeated over and over again in the years which followed. It was

encompassed in the formula according to which harmonization was a method as opposed to an end. According to this standpoint, harmonization was there to help furthering the establishment of the common market; it was not an end in itself (cf Leleux 1968, p. 161; Goldman 1969, p. 884; Close 1978, p. 463; Waelbroeck 1988, p. 254). Not everyone approved or agreed.

Lecourt and Chevalier, in an article published in 1963, seemed to deplore that 'until now, article 100 seems to have been considered as a method to help eliminating technical obstacles to trade, as opposed to a method for general harmonization' (p. 275). For them, legal harmonization could, and should, take another sense and become an instrument for European unity (pp. 273 and 278). They wrote in a grandiloquent language: '*Rapprocher des lois, c'est faire oeuvre progressive. C'est aussi rapprocher des points de vue: cela exige et le concours du temps et le maintien d'une volonté commune*' (p. 279).[15] In a characteristically 'agressively *communautaire*' attitude (Dashwood 1977), the European Parliament echoed this position when it endorsed in a famous resolution the report by Otto Weinkham who argued that the deep influence exercised by judicial systems on social customs and habits made legal approximation a determining factor for unity (1965, p. 2, paragraph 7; see also p. 25, paragraph 90). The step from recognizing this to be the case to thinking that harmonization should be encouraged and used to forge unity, was small. Some thought that the Commission had taken it. When criticized, the Commission, in the person of its President Hallstein, defended itself by saying that harmonization was not being pursued for its own sake. This did not convince everybody, and some remained worried (for example Rodière 1965, p. 349). Others continued to hope for harmonization to be both broadened in its domains and implemented at a faster rate.

Considering that economic requirements ultimately touch upon all aspects of society, it is difficult to assess whether the Commission pursued harmonization for its own sake or not. But, whatever the answer to this question, it is clear that, for those who wanted 'Europe' to happen, harmonization was a fundamental, rather than an 'ancillary' (Dashwood

15 To approximate laws is a progressive work of art. It also means the approximation of various perspectives. This requires both time and the maintenance of a common will.

1977 and 1983) activity. In 1960, Cerexhe predicted that article 100, despite its legal requirement of a direct incidence on the common market, would 'allow all actions'. The article appeared restrictive, he added, but it was not, for the engagement in the economic entreprise was bound to have infinite repercussions (p. 36). He also emphatically declared: 'Europe is born, at least conceived... The words of economic Europe, political Europe, European conscience should sound as a crying call for all those interested in legal problems' (pp. 35-36). For people like him, the path to general harmonization was clearly open; it was linked to the development of a Europen identity.

II. Harmonization viewed by non-lawyers

Speaking of 'social harmonization'

Thirty-five years later, can we say that Cerexhe's dream of seeing a European conscience develop has come true? Eurobarometers, or surveys made on behalf of the European Commission, suggest a negative answer. They contain numerous indications to the effect that, at least to this day, a European consciousness hardly exists. Few 'Europeans' think of themselves as such, as the answers to the question 'Do you think of yourself not only as (Dutch, Greek, German ...) citizen but also as a citizen of Europe?', asked a number of times from 1982 onwards, make clear. Three percent of respondents to a survey conducted in 1993 in the (then) twelve Member States did not even know whether their country was a member of the European Community, while one percent positively thought that it was not (Eurobarometer 39, 1993, p. A33). By contrast to national consciousness which is obvious (as the very phrasing of the questions implicitly indicates), European consciousness cannot be taken for granted (otherwise questions about it would not be asked, for their answers would not need to be collected). At the same time, it is sometimes asserted that nationals of the Member States, whether they are aware of it or not and whether they like it or not, are becoming more and more 'European'.

This is the message encompassed in a history textbook which speaks of a 'certain harmonization of life-styles' taking place in Europe (Delouche 1992, p.1). Similarly the anthropologist Jaffe refers to the 'process of harmonization of the social ... arena in the European Community' (1993, p. 66). What such harmonization entails is not altogether clear. Perhaps a document on education issued by the Commission provides a clue. It remarks that a child living in Rotterdam has probably more in common with a child living in London or Berlin, than with a child who is also Dutch but who lives in the countryside. This may well be so (in some respects), but the comparison can arguably be extended to children living outside the European Union, for example in Toronto. Are we then talking of European harmonization or of a more global phenomenon? And why do we speak at all of a *European* social harmonization? For the Commission (backed by the national governments of the Member States, who are the authorities ultimately responsibly for the text of the Treaties), it must be a way to legitimize its political and legal involvement in matters until then dealt with nationally. The implication of the situation of the Rotterdam child, as reported, is that it makes sense to organize education at European, rather than national, level. In this sense, of course, social harmonization largely becomes a self-fulfilling prophecy : in the same way as predicating the existence of the nation allowed the creation of nationals (cf Weber 1976), so the constitution of the European Community opens the path to the creation of the Europeans. One can understand in this light the determination by the Commission to instill a sense of Europeanness amongst 'Europeans' (Shore 1993).

The role of public education in forging political, and especially national, identities has been often commented upon. It is therefore not thoroughly surprising that, for one official of the Commission, the introduction of harmonized European history books in schools represented the most important aspect of this consciousness-raising policy after the single currency (*ibid*, p. 794). Such 'harmonized' text-books, as Shore qualifies them without second-thoughts, have not yet been made compulsory, but they are appearing; I have seen two in the library of the European Commission, one of which is the history textbook I have quoted above. The book is extra-ordinary: not so much in its content which reminded me of my own school-books as in its format. It presents itself as the first

ever Euro-history textbook.[16] It contains twelve chapters (in fact eleven plus an introduction), written by twelve historians, each from one of the (then) twelve Member States. Although this is not said, efforts must have been made also to interest publishing houses in each country; seven (each from a different Member State) were eventually associated to the project, simultaneously conducted in six languages (German, French, Italian, Portuguese, Dutch and Greek). The editorial of the Belgian edition[17] sets the tone of the enterprise. Its foreword starts: 'By opening this book, you penetrate into the heart of a historical event; by reading it, you participate in this event'. This statement is printed in bold characters. All those involved in the preparation of the book undoubtedly took this 'creation' seriously. They were self-conscious of its significance and careful to convey its importance to their readers, whom they positively encouraged to participate in its meaning.

As was certainly fitting in regards of the aim of putting Europe 'on the scene', the first chapter of the book (in fact its introduction) is devoted to a discussion of European identity. The text begins with a paragraph on the story of the Greek mythological figure Europa, continues with comments on the obscure origins of the term 'Europe', and goes on to discuss two possible ways of using the expression, i.e. as a geographical notion and as a political concept. It is in the presentation of Europe as a political concept that the term 'harmonization' appears. After having asked the question of 'How long has the concept of "the European" existed, if it exists at all?' and answered 'Probably not very long', the development of intercontinental travel is said to have facilitated personal contact and exchange of goods. The opening page of the text-book then concludes with the words: 'This has led to a certain harmonization of life-styles, varying from class to class, which is both a consequence and a cause of the quest for European unification' (1992, p.9).

As Shore when he speaks of harmonized textbooks and Jaffe when she speaks of social harmonization, the book takes for granted that readers will understand the term harmonization. And they indeed probably will, even though the word has only recently started to enter our vocabular-

16 In fact, in terms of year of publication, it is historically second compared to the other European textbook I have seen in the European Commission library.

17 This was the only edition owned by the Commission library when material for this article was collected in April 1994.

ies. Its meaning seems 'naturally' to be grasped, which may explain the ease with which the word is picked up, by law students, anthropologists and, presumably, school-children. A specialist of EC law whom I was questioning on its origins thus replied to me: 'The term perfectly renders what it means. Researching its origins presents no interest whatsoever. There is no need for this because 'harmonization' exactly renders what it is supposed to cover. It makes perfect sense'. This impression is deceptive.[18] As we have seen, although the term etymologically refers to a better construction of unity through diversity, it is increasingly become used as a synonymous of uniformity. This ambiguity raises the question of whether the first process (unity) inexorably leads to the second (uniformity or at least homogeneization). More prosaically, it may explain why harmonization, however successful in the European jargon, has also become a word which is now being avoided.

National diversity celebrated

Initially, the problem most commonly associated with legal harmonization was that it was too slow a process (Lecourt and Chevalier 1963, p. 279; Leleux 1968, p. 130; Dashwood 1977, p. 292; Dashwood 1983, p. 185; Vignes 1993, p. 301); now the most common criticism is that too much has been done (see below). The originally perceived 'slugginess', to use the phrase of the European Parliament borrowed from the Weinkamm report, was of course the price to pay for uniformity, which

18 It also overlooks the possible assumptions which the term may implicitly carry. A root such as 'harmony' makes it difficult to regard the term as merely designating a legal technique. Interestingly the word 'harmony' also appears in the opening pages of the 'first Euro-history text-book'. Opposite the page containing the discussion on European identity, is reproduced, as a didactic illustration, the fresco 'The effects of good government' by Ambrogio Lorenzetti. This is not the place to analyze the suitability of a 14th century landmark in European art history to emphasize the European 'common heritage', itself an expression which comes back as a leit-motiv in European discourse. But the caption cannot help retain our attention. Perhaps coincidentally, it reads: 'Une Europe de l'harmonie' (Harmonious Europe). Does any more needs to be said? Would anyone in his right mind resist the European project? Could it be that 'harmonization' similarly carries with it, one could almost say subliminally, a particular message, i.e. that it helps unconscioulsy to reinforce the idea that the process/processes which it designates is/are conducive of peace in Europe? In this perspective, it could be seen as part of the 'selling-off' of the European project to the would-become 'true' Europeans. This would also help to account for the ease with which it has spread.

was what was achieved through the method of total harmonization.[19] The technical character of harmonization did not make it any less politically controversial or socially sensitive than other matters, and thus no easier to reach agreement upon (Dashwood 1977, p. 294). The practically soft boundaries between the economical, the political and the social also meant the adoption of so-called technical provisions had social repercussions. This is why the more recently perceived problem arose.

A. Mattera, while he was heading the division 'Elimination des restrictions aux échanges; mesures de sauvegarde', wrote this about the European Court of Justice's *Cassis de Dijon* cases (i.e. the original case plus the numerous ones who applied the two principles mentioned above): "[*C*]*ette jurisprudence ... a permis à l'idée féconde de la subsidiarité de germer, en sonnant le glas d'une approche législative susceptible de transformer la Communauté en une sorte de rouleau compresseur harmonisateur ou pire encore, en un "Etat-Providence", avec des prétensions interventionnistes et une activité "boulimique" relevant davantage du perfectionnisme technique que du souci de servir le citoyen'* (1991, p. 8)[20]. Steam-roller and bulimic activity! Could stronger words be used, even if they are only introduced as something which was 'susceptible' to happen, a word which may well translate from official language to common parlance as 'likely', if not already happening.

The Commissioner Bangemann echoes Mattera one year later in an article whose title speaks of '*furie réglementaire*' (reglementary madness): [The European television viewer] is told that the major problem today is to restore national identity against European integration which destroys, harmonizes and aligns, like a steam-roller [again !], all

19 In the first 14 years of the European Commnity, 97 directives had been taken on the basis of article 100. Of these, as many as 33 modified earlier directives. Of the 64 subjects of directives, 13 were related to fiscal matters; 12 to seeds and phytosanitary rules; 12 to motor vehicles; 8 to measure instruments and units; 7 to alimentary products; 3 to veterinary rules; 2 to public contracts; 1 to pharmaceuticals; 1 to dangerous products; and 1 to civil liability for motor vehicles (Vignes 1973, pp. 193-94).

20 This case-law ... has allowed for the development of the fruitful idea of subsidiarity. It announced the death of a legislative approach which could have tranformed the Community into a kind of harmonizing steam-roller, or even worse, into a 'Welfare State' with interventionist pretensions and a 'bulimic' activity which had more to do with technical perfectionism than with the desire to serve the citizen.

national habits and cultures (1992, p. 5).[21] Judging from Wilson's introduction to one of the first anthropological books on the European Community, it is indeed an image commonly held in Europe. Wilson writes: [M]any EC citizens see the EC as an intrusive and meddlesome institution which interferes with too much of their day-to-day lives. ... [Integration] represents a harmonization and standardization of products and images to such a degree that many Europeans, rightly, fear a homogeneization of European cultures into some as yet unknown "Euro-culture". Perceived threats to the British pints of milk and beer, French cheeses, and the Spanish bullfight may seem a bit trivial to outsiders, but to the people who see these as less a symbol and more a definition of culture, Eurostandards are an unwanted aspect of EC membership' (1993, p. 11). Despite much anthropological attention (including Pitt-Rivers 1993), the attempt by one MEP to have measures recognizing bullfighting (including VAT on tickets to the feria) struck down on the basis that 'the majority of people in Europe regard [it] as a repulsive and degrading activity' (Official Journal of the European Communities No C 99/5) could never have been expected to be successful. Such attempt, in the form of repeated questions to the Commission, represented a personal, rather than a legislatively potent, voice. It remains, however, that Wilson identifies a trend to which European institutions had better react, namely the fear by Europeans to lose their distinctive character.[22]

This is the context in which to understand the present favour in which 'mutual recognition' is held. Of course, as an expression, it cannot guarantee anything, and certainly not that difference will necessarily always be regarded with deference (cf the remark by Vignes cited above). But it suitably denotes the new mood in which harmonization becomes suspect and redefined. A lawyer explained in 1988 that, contrary to public belief, the aim of the Community was not to create Euro-products. It was to ensure that a Member State was not discriminating against foreign products for the sake of protecting its own national products. In fact repeating the second principle of Cassis, he said that the objective

21 Compare: 'Will European cultures be steamrolled into a continent-wide pattern of uniformity, propelled by market forces and media magnates and directives from a few Europe metropoles?' (Pieterse 1991, p. 4).

22 In 1983, Dashwood speaks of 'political odium' in reference to harmonization (p. 178), an expression absent in the first edition of the article. My guess is that the widespread negative feeling had greatly developed in the years separating both editions, which is not to say that criticisms did not exist in 1977 (cf Dashwood 1977).

was to allow a good produced in one country to be marketed in another country. After having repeated the well-known formula according to which harmonization is a means and not an end in itself, he concluded, echoing the economist perspective on the question, that 'harmonisation must favour an optimal divergence of products' (Waelbroeck 1988, pp. 253-54). Respect for, possibly even promotion of, difference was now becoming a necessary policy within the Community. To keep quoting Mattera: '*La conception d'une Communauté légiférant à outrance, tendant à ce que tout l'arsenal législatif national soit ramené à un seul dénominateur commun européen, a été abandonnée au profit d'une Communauté plus soucieuse de sauvegarder les particularités et les traditions nationales, régionales et locales*' (1991, pp. 8-9).[23]

Diversity is now being celebrated for its beauty and richness. A book on 'Integration Through Law' declares in 1986 in a passage which begins with the familiar theme according to which policy is not pursued for its own sake but as a means to an end: '... integration can and indeed shall be seen not as an absolute per se value and aim, but as a flexible instrumental value and aim, an approach in which the "beauty" of diversity maintains its place and value any time it is not dangerously divisive' (cited in Sands and Cameron 1986, p. 469, inverted commas in the original). In 1991, Daniel Vignes remarks that, although article 100 does not say it, it is when a disparity in national legislations has a *negative* direct incidence on the common market that harmonization is allowed to take place (p. 534), as if he had suddenly realized (there is no remark to that effect in the 1973 edition of the text) that diversity does not necessarily result in an 'inconvenience' and that there is no need to fight it as such, 'for its own sake'. The Commissioner Pinheiro remarks in 1993 that '[The Community] must make sure that unthought-through economic and technical policies do not threathen cultural diversities, which constitute the richness of Europe' (p. 5). For their part, the authors of a Penguin book on EC law mention the 'marvellous internal diversity' of the Community (Weatherill and Beaumont 1993, p. 457).

23 The conception of a Community which excessively legislates, in such a way as promoting the reduction of the national law system to a single European common denominator, has been abandoned for a Community more wary of protecting the national, regional and local particularisms and traditions.

Such expressions were already used in the early days of the Community, especially to try to calm the fears of the detractors of the European project (cf Rodière 1965, p. 340). But they have become more frequent. Moreover richness of diversity has now become the ground for the adoption of a specific course of action, as in the *Groener* case which came before the European Court of Justice in 1987.[24] The following words, part of the written observations which the French government submitted to the Court, are worth quoting:'[the disputed provision] is in the public interest since it is pursuing an objective (the maintenance of cultural diversity in the Community and respect for linguistic pluralism) which is worthy of being recognized and furthered by the Community authorities'. The case concerned a Dutch lecturer who was required by law to know (some) Irish to be considered for a permanent lectureship in Ireland. The basis of her argument before the Court was that the Irish measure had for principal effect to exclude non-Irish nationals from the post. In her opinion, the Irish law contained a discrimination based on nationality and was therefore contrary to EC law. The Court took another view. It decided that the contested measure was part of 'the policy followed by Irish governements for many years not only to maintain but also to promote the use of Irish as a means of expressing national identity and culture'. For the Court, the measure was proportionate and non-discriminatory; it complied with EC law. Although language diversity has always been preserved within the institutions of the European Community (Abélès 1992), another solution would have been possible, considering that English was the language in which teaching was actually conducted. My guess is that the judgment would have been different ten years before, when the celebration of diversity had not yet come to the forefront of European discourse. The introduction in 1992 of article 128 in the EC Treaty captures the new mood: 'The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common heritage to the fore'.

Which diversity is thus being celebrated? Let us return to the quotations of the preceding section to answer this question. Bangemann speaks of national habits and cultures; Wilson of the British pints of milk, French

24 *Groener* v *Minister for Education and the City of Dublin Vocational Education Committee*. Case 378/87 [1989] E.C.R. 3967.

cheeses and the Spanish bullfight; Mattera of national, regional and local particularisms and traditions; the *Groener* decision of 'national identity and culture'. The emphasis is clearly on the nation, even though there is a reference to the region and the 'local'. What the Europeans would be resisting is not so much homogeneization as such as the destruction of *national* ways. What is meant by national ways, however, is not altogether clear. We speak, wrongly, of the 'Spanish' bullfight (in fact also practiced in Southern France) and of 'French' cheeses (in fact more locally produced). It remains that we have grown accustomed to use the nation as a frame of reference. It is therefore not particularly surprising that resistance against the European Community would have crystallized around the (problematic) idea of the nation.

Harmonization, uniformity and diversity: A problematic link

Resolutely presented by the European Parliament in 1965 as the ideal to be attained, harmonization backlashed on its proponents as the general public (or rather the public aware of European policies) became to feel threatened by it. There is now a tendency in the public to assimilate harmonization with the creation of Euro-products and with cultural homogeneization. But does a link necessarily exists between legal harmonization, including in its total form, and the development of so-called Euro-products?

The directive on the 'TV without frontiers' demonstrates that it does not. This directive is a measure of the total harmonization type, for Member States have no choice in the way to implement the rules it edicts. By making compulsory the production of European programs within a certain percentage of time vision, its aim and result is to keep Americans programs at bay and, thus, to maintain the diversity of European culture.

Leaving this particular directive aside, it can be said that legal harmonization generally has a double consequence. On the one hand, it eliminates some 'traditional' products; on the other, it increases the range of products available at any one place (for example by making French cassis available on the shelves of German supermarkets). Does this entail a

homogeneization of products - and of consumers/persons? It could be argued that it does not so much signal the manufacturing of a limited range of Euro-products found in equal quantity throughout Europe as it favours the dissemination of a number of national products across a wider territory than was previously the case. This is to say that the link between legal harmonization and uniformity on the one hand and social and cultural homogeneization on the other hand is not a simple one.[25]

25 The same is true of globalization which 'may result in another diversity of culture, based more on interconnections than on autonomy' rather than in just homogenization (Hannerz 1992, p. 266). In fact, European harmonization can probably be seen as a particular manifestation of globalization.

Conclusion

To recap, we have seen that, as a legal term, 'harmonization' made its way in the EEC Treaty alongside two other terms, namely 'coordination' and 'approximation', the latter regarded as its equivalent but in practice less popular (except among some specialists). Its introduction in the European legal vocabulary can be explained through its etymology: the term is indeed perfectly suitable to render the idea of an arrangement between different parts of a whole, in this case the national legislations of the Member States, in such a way as making these parts serve a single purpose, in this case the establishment of the Common Market. A review of the various harmonization methods practiced by the European institutions since their inception nevertheless revealed that the underlying desire of the proponents of the European idea was to seek legal uniformity whenever possible, rather than the preservation of the specificity of national legislations. Considering that harmonization is not merely a technical matter with purely economic aims but involves social and political interests, some have recommended its use for the forging of a European identity. At least to this day, however, a European consciousness can hardly be said to have developed. At the same time, social harmonization is increasingly asserted to be happening in Europe. In this latter context, the term again slips in its meaning: it is used to denote homogeneization, rather than unity through the preservation of diversity. This can account for the current contempt in which harmonization is held, as Europeans fear that their specific character will decompose into a homogeneous European culture. The answer by the European institutions to this negative reaction has been to celebrate (national) diversity. But the link between legal harmonization and cultural homogeneization is not as obvious as it seems. It should be the object of research and analysis rather than being simply assumed.

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